

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOMBARDIER INC.,

Plaintiff,

v.

MITSUBISHI AIRCRAFT
CORPORATION, MITSUBISHI
AIRCRAFT CORPORATION AMERICA
INC., et al.,

Defendants.

No. 2:18-cv-1543 JLR

**DEFENDANT MITSUBISHI AIRCRAFT
CORPORATION'S REPLY IN SUPPORT
OF ITS MOTION TO FILE UNDER
SEAL PORTIONS OF EXHIBITS
ATTACHED TO THE DECLARATION
OF MARY GASTON**

NOTE ON MOTION CALENDAR:

May 31, 2019

I. INTRODUCTION

Mitsubishi Aircraft Corporation ("MITAC") filed a Motion to Seal (Dkt. 125) portions of Exhibits A and B (the "Exhibits") attached to the Declaration of Mary Gaston (Dkt. 128) (collectively, the "Subject Redactions") in support of MITAC's Motion to Dismiss. Bombardier subsequently filed its First Amended Complaint (Dkt. 143), mooted MITAC's Motion to Dismiss, which it withdrew. (Dkt. 153.) After MITAC withdrew its Motion to Dismiss, Bombardier filed a Response to the Motion to Seal, arguing that the Subject Redactions should be sealed in their entirety and remain part of the record, or, alternatively, that they should be removed from the record. (Dkt. 219.)

1 As an initial matter, Bombardier's alternative requested relief should be rejected because
 2 MITAC cites the Exhibits in its opposition to Bombardier's pending Motion for a Preliminary
 3 Injunction (instead of unnecessarily cluttering the docket by refileing the same Exhibits with its
 4 opposition brief). (*See* Dkt. 165 at 15, n.8.) As such, removing them from the record would
 5 prejudice MITAC. Thus, the sole question for the Court is whether Bombardier has
 6 demonstrated that the Subject Redactions should be shielded from public view.

7 MITAC is mindful of the Court's instruction not to put the cart before the horse by
 8 litigating the merits of Bombardier's trade secret claim in the context of a motion to seal. (Dkt.
 9 111 at 14.) MITAC does not seek to do so here. Instead, Bombardier seeks to redact undeniably
 10 public information untethered to any of the compilation trade secrets it claims are at issue.
 11 Bombardier thus attempts to extend the Court's ruling too far, interpreting it as granting
 12 Bombardier permission to file under seal any information in the case, including a verbatim quote
 13 from the Federal Register, by simply invoking the magic words. As Bombardier's position
 14 cannot be reconciled with the Ninth Circuit Court of Appeals' "compelling standard" precedent,
 15 MITAC respectfully requests that the Court unseal the Subject Redactions.

16 II. ARGUMENT

17
 18 At issue are portions of Exhibit A, all of Exhibit B, and a portion of the Gaston
 19 Declaration. Exhibit A is a full, unredacted copy of an August 18, 2016 email from Defendant
 20 Keith Ayre (the "Ayre Email"). In the Ayre Email, Ayre responds to a question by copying-and-
 21 pasting a portion of a Federal Aviation Administration's ("FAA") summary of a final rule, which
 22 was published verbatim by the FAA in the Federal Register. Bombardier wants the copied-and-
 23 pasted public information sealed. Bombardier wants the entirety of Exhibit B sealed because it
 24 shows the portion of the Federal Register that contains the excerpted quote from the Ayre Email.
 25 And Bombardier wants the Gaston Declaration sealed because it provides a URL to the Federal
 26 Register website with the excerpted quote from the Ayre Email. (*See* Dkt. 219 at 2.)

1 While Bombardier’s response claims that the quote from the Federal Register “is also
 2 protectable trade secret information,” Bombardier does not tie this information to any compiled
 3 trade secret that it has identified in this litigation (and Bombardier cannot claim the Federal
 4 Register, standing alone, is its trade secret).¹ Nor does Bombardier support its request for sealing
 5 with a declaration linking this public reference to any Bombardier trade secret compilation.
 6 Even a cursory review of the Ayre Email shows that Ayre simply responded to a generic
 7 question by providing verbatim guidance from the FAA on the subject. (*See* Dkt. 128.) Ayre
 8 does not quote from a Bombardier document or otherwise reveal how or even if Bombardier
 9 looked at this FAA guidance. (*Id.*)

10 Accordingly, Bombardier goes too far. The logical conclusion of Bombardier’s position
 11 is that *any* public information, such as regulations or FAA guidance, related to aircraft
 12 certification is a Bombardier trade secret if anyone at Bombardier ever referenced or relied on
 13 the public information in the course of certifying any part of a Bombardier plane. That cannot be
 14 right, particularly where, as here, there is no link between the public information and the alleged
 15 trade secrets Bombardier purports to enforce. Further, Bombardier’s reliance on the timing of
 16 Ayre’s email also cuts firmly against Bombardier’s position. Bombardier suggests there would
 17 have been no exchange of confidential information if Ayre had just waited eight more days—that
 18 is, after he had stopped working for Bombardier—to answer the question. (*See* Dkt. 219. at 4.)
 19 But that implies that it’s Ayre’s *status* as a Bombardier employee that somehow renders the
 20 public information confidential. Since Bombardier implicitly concedes that Ayre could have
 21
 22

23 ¹ In its Order addressing prior motions to seal (Dkt. 111), this Court sealed references to publicly available
 24 information because Bombardier asserted that revealing those references would reveal the contents of Bombardier’s
 25 alleged trade secrets that the Court found Bombardier had sufficiently described. (*See* Dkt. 111 at 13-15.) The
 26 Court explained that those references “relate to [Bombardier’s alleged trade secrets] and should therefore be filed
 under seal.” (*Id.* at 13.) Here, on the other hand, Bombardier does not argue the Subject Redactions contain
 information found in any of the alleged trade secrets Bombardier has identified in this litigation. (*See generally* Dkt.
 219.) And while Bombardier invokes the magic words “trade secret” and “compilation,” Bombardier does not
 identify what alleged compilation is supposedly being revealed. (*Id.*)

1 freely shared the information it wants redacted after he left, there is no compelling reason for
2 sealing the information from the public now.

3
4 **III. CONCLUSION**

5 For the foregoing reasons, MITAC respectfully requests the Court deny MITAC's Motion
6 to Seal, and unseal the Gaston Declaration and Exhibits A and B attached thereto.

7
8 DATED: May 31, 2019

s/ Mary Z. Gaston

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on May 31, 2019 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses indicated on the Court's Electronic Mail Notice List.

DATED this 31st day of May 2019

s/Mary Z. Gaston

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